

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 602

In Re FairPoint Communications, Alleged Violation of)
May 6, 2009, as reported by FairPoint Communications)

Order entered: 4/7/2011

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to FairPoint Communications ("Respondent").¹
2. Incident Date: May 6, 2009
3. Incident Location: P8 Pine Street, Burlington, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 266 Main Street - Room 201, Burlington, VT 05401
5. Date Incident Reported to Effected Utility: May 6, 2009
6. Date NOPV issued by Department: July 31, 2009 (#1624)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 4/13/09, Burlington public Works made a notice of excavation activities to Dig Safe System Inc. Fairpoint did not locate and mark its underground facilities, in the area of the proposed excavation. This resulted in an unmarked Fairpoint cable being damaged causing a phone service outage for approximately 3 hours. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to FairPoint New England-VT during the 12 months preceding this incident."

1. The NOPV was issued to "FairPoint New England-VT"; however, we note that the Company name is Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint Communications").

8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006
9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Three Hundred Dollars (\$300.00), and attendance at a Department-approved underground damage prevention seminar.
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to FairPoint Communications on July 31, 2009.² To date, FairPoint Communications has not filed a response to the NOPV.

Conclusion and Order

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, shall pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

2. Letter of Hans E. Mertens, dated July 31, 2009.

Dated at Montpelier, Vermont, this 7th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 7, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.